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**O.G.S. Technologies, Inc. and United Automobile,
Aerospace & Agricultural Workers of America
Local 376, AFL–CIO.** Cases 34–CA–9336 and
34–CA–9458

May 31, 2006

ORDER REMANDING PROCEEDINGS

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND
KIRSANOW

On November 29, 2002, Administrative Law Judge Howard Edelman issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Consistent with our decision in *Dish Network Service Corp.*, 345 NLRB No. 83 (2005), the Board has decided to remand this case in order for another judge to review the record and issue an appropriate decision.¹

In this case and in many others, the judge has copied extensively from the General Counsel's brief in his decision. In each case, the judge then decided the case in favor of the General Counsel.² Our comparison of the General Counsel's brief and the judge's decision reveals that the majority of the judge's decision was copied verbatim from the General Counsel's post-hearing briefs. The judge copied verbatim from the General Counsel's briefs in both his factual statement and his legal discussion.

In *Dish Network*, 345 NLRB No. 83, slip op. at 1, we said:

[I]t is essential not only to avoid actual partiality and prejudgment . . . in the conduct of Board proceedings, but also to avoid even the appearance of a partisan tribunal.” *Indianapolis Glove Co.*, 88 NLRB 986 (1950). See *Reading Anthracite Co.*, 273 NLRB 1502 (1985); *Dayton Power & Light Co.*, 267 NLRB 202 (1983).

¹ Member Liebman dissents from the remand order for the reasons stated in her dissent in *Regency House of Wallingford*, 347 NLRB No. 15 (2006).

² See *CMC Electrical*, 347 NLRB No. 25 (2006); *Eugene Iovine*, 347 NLRB No. 23 (2006); *Regency House of Wallingford*, 347 NLRB No. 15 (2006); *Trim Corp.*, 347 NLRB No. 24 (2006); *J.J. Cassone Bakery, Inc.*, 345 NLRB No. 111 (2005); *Dish Network Service Corp.*, 345 NLRB No. 83 (2005); *Fairfield Tower Condominium Assn.*, 343 NLRB No. 101 (2004).

Considering the instant case in the context of all of these cases as a whole, the impression given is that Judge Edelman simply adopted, by rote, the views of the General Counsel and failed to conduct an independent analysis of the case's underlying facts and legal issues.

We recognize that the Respondent did not specifically except to the judge's extensive copying. However, that fact does not, and should not, preclude the Board from taking corrective measures. It is the Board's solemn obligation to insure that its decisions and those of its judges are free from partiality and the appearance of partiality.

We understand that this remand delays the issuance of a Board decision, and this may inconvenience the parties. However, we believe that the fundamental necessity to insure the Board's integrity outweighs these considerations.

In order to dispel this impression of partiality, we will remand the case to the chief administrative law judge for reassignment to a different administrative law judge. This judge shall review the record and issue a reasoned decision.³ We will not order a hearing de novo because our review of the record satisfies us that Judge Edelman conducted the hearing itself properly.

ORDER

IT IS ORDERED that the administrative law judge's decision of November 29, 2002, is set aside.

IT IS FURTHER ORDERED that this case is remanded to the chief administrative law judge for reassignment to a different administrative law judge who shall review the record of this matter and prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on the evidence received. Following service of such decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.

³ The new judge may rely on Judge Edelman's demeanor-based credibility determinations unless they are inconsistent with the weight of the evidence. If inconsistent with the weight of the evidence, the new judge may seek to resolve such conflicts by considering "the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences which may be drawn from the record as a whole." *RC Aluminum Industries, Inc.*, 343 NLRB No. 103, slip op. at 1 fn. 2 (2004), quoting *Daikichi Sushi*, 335 NLRB 622, 623 (2001)(internal quotation marks and citations omitted). Alternatively, the new judge may, in his/her discretion, reconvene the hearing and recall witnesses for further testimony. In doing so, the new judge will have the authority to make his/her own demeanor-based credibility findings.

Dated, Washington, D.C., May 31, 2006

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| Robert J. Battista, | Chairman |
| Wilma B. Liebman, | Member |
| Peter N. Kirsanow, | Member |

Terri Craig, Esq., for the General Counsel.

Joseph Summa, and William A. Ryan, Esqs., of *Summa & Ryan*,
for the Respondent.

Thomas Meiklejohn, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me on December 11, 2001, March 21, and September 5, 2002 in Hartford, Connecticut.

Charges were filed by United Automobile, Aerospace & Agricultural Implement Workers of America, Local 376, AFL-CIO (the Union) against OGS Technologies, Inc., (the Respondent). A consolidated complaint issued against Respondent alleging a violation of Section 8(a)(1) and (5) of the Act.

Based upon the entire record herein, including my observation and demeanor of the witnesses and briefs submitted by counsel for General Counsel and counsel for Respondent, I make the following Findings of Fact and Conclusions of Law.

At all material times, Respondent, a Connecticut corporation with an office and place of business in Waterbury, Connecticut, has been engaged in the manufacture and non-retail sale and distribution of brass buttons. On or about January 21, 2000, Respondent purchased the business of Waterbury Companies Inc., d/b/a Waterbury Button Company (Waterbury Companies), and since then has continued to operate the business of Waterbury Companies, in basically unchanged form, and has employed as a majority of its employees, individuals who were previously employees of Waterbury Companies.

Respondent admits that it is a successor to Waterbury within the meaning of *Fall River Dying Corp. v. National Labor Relations Board*, 482 U.S. 27, 1987.

During the 12-month period ending July 31, 2001, Respondent, in conducting its operations described above, purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Connecticut.

Respondent admits it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is also admitted that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

On January 21, 2000, Respondent purchased the assets of Waterbury Button Company (Waterbury), including accounts receivable, inventory, tooling, fixtures, machinery, equipment,

technical data rights, patents, trademarks, trade names, literature, plates, negatives, films, price lists, customer lists, customer history files, vendor lists, open customer purchase orders, open contracts, open vendor purchase orders, display booths, office equipment, computers, vehicles, shop supplies, products, product lines and distributor agreements. Michael Salamone is Respondent's majority shareholder (60%) and President. Salvatore Geraci is a 20% shareholder and is Respondent's executive vice president of operations. Robert J. Oppici is the remaining 20% shareholder and is Respondent's executive vice president of sales. Prior to the purchase, Geraci was Waterbury's plant manager and Oppici was its sales manager. Respondent also continued the employment of the following former Waterbury managers: Nick Longo (inventory control manager); Tom Wirges (engineering manager); and Tony Romeo (supervisor of finishes).

Prior to the sale, the Union represented a unit of production and maintenance employees employed by Waterbury. The most recent collective-bargaining agreement between Waterbury and the Union, effective by its terms from April 17, 1997 through March 12, 2000, recognized the Union as the sole and exclusive collective-bargaining representative for a unit consisting of the following employees:

All production and maintenance employees at its Waterbury, Connecticut division, including receiving, weighing and stock clerks, but excluding office and professional employees, guards, drafters, drafting, tool room and billing clerks, nurse, laboratory employees, expeditors, timekeepers, supervisors, factory supervisors, and all other supervisors as defined in Section 2(11) of the National Labor Relations Act, as amended.

While Die Makers/Cutters are not expressly included in or excluded from the above unit description, it is undisputed that the job classification was recognized as a production and maintenance position and as such was incorporated in the unit. Waterbury maintained this unit throughout a long series of collective-bargaining agreements.

Thereafter, on or about January 31, 2000, Respondent hired 19 former Waterbury employees, including Die Makers/Cutters Michael Petroraio and Rich Carey.

Employee Petroraio credibly testified that on or about January 22, 2000, in an employee interview, President Salamone showed him a job description reflecting the job duties of the newly entitled "Die Engineer" position. Salamone stated that the Die Engineer position would be a management position as a result of Respondent restructuring the plant's operations. Salamone further explained that the principal distinction between the former Master Die Maker/Cutter position and the newly entitled "Die Engineer" position would be the added responsibility to seek out new methods and processes to reduce production time. Geraci subsequently contacted Petroraio and a second meeting was scheduled to further discuss the Die Engineer position. The following Thursday, Petroraio went to the plant and met with Geraci and Oppici. During the second meeting, Geraci stated that Respondent was changing its production operations to a "cell manufacturing" approach. Geraci

explained that this would involve a lot of cross training among production employees. Geraci reiterated that the Die Engineer position would be classified as managerial and that if Petrorao were to assume the position, his duties he would involve the investigation of new processes for die development. Petrorao was also told that his wages would remain the same and he would continue to receive overtime after 8 hours at a rate of time and one-half. Petrorao later accepted the proffered Die Engineer position and commenced employment with Respondent on January 31. Around the same time, Carey was hired as the remaining Die Engineer position at about the same wage rate as he had been earning with Waterbury. Carey and Petrorao also retained the same health care, life insurance, disability, and 401(k) pension benefits as at Waterbury. As was the case with Waterbury's Master Die Cutter position, it was only Petrorao and Carey who held the "Die Engineer" position.

On January 24, prior to Petrorao and Carey's start date, Respondent began its operations at the same location as Waterbury, utilizing the same equipment and manufacturing the same product for essentially the same customer base. Respondent began those operations with 20 production and maintenance employees, 19 of whom were former Waterbury Button employees who were employed in the production and maintenance Unit represented by the Union. Since that time, Respondent has continued to operate with substantially the same number of production and maintenance employees.

By letter dated February 18, Respondent acknowledged that when it had hired a full compliment of employees, it expected to have a bargaining obligation with the Union. Accordingly, at an ensuing meeting between Respondent and the Union on March 2, Respondent extended recognition to the Union as the bargaining representative of Respondent's production and maintenance employees, excluding Die Engineers who Respondent contended were now managerial employees. However, Respondent recognized the Union as the bargaining representative for the following nine (9) newly designated job classifications: (1) Automation Tool-Setter/Operator; (2) Die Sinkers/Cutter; (3) Toolmaker, Eyelet; (4) Maintenance, Electrician; (5) Maintenance/Repairer; (6) Machine Operator/Tender; (7) Metal Finisher/Plater; (8) Toolsetter/Operator; (9) Quality Technician/Machine Operator. Respondent did not recognize any bargaining obligation with respect to the Die Engineer position.

It is uncontested that Respondent, unlike its predecessor, utilized a "cell manufacturing" concept in its production process. A cell manufacturing process provides for the cross training of employees to perform more than one task in the course of production in order to eliminate down time and to maximize employee output. Respondent's conversion to a cell manufacturing process resulted in the overall reduction of production and maintenance job classifications from the 49 existing under Waterbury to the 9 listed above that Respondent recognized as included within the production and maintenance unit represented by the Union, in addition to the disputed "Die Engineer" classification. Accordingly, Respondent cut its workforce by more than half that employed by its predecessor.

Despite the implementation of the cell manufacturing process, a review of the job descriptions before and after the pur-

chase reveal that no significant changes were made to the work performed by the production and maintenance employees in the Unit. Rather, employees now assumed a multi-disciplinary approach incorporating the job duties of more than one classification in performing the same work.

As previously noted, both of Waterbury's Master Die Cutters, Petrorao and Carey, were re-employed by Respondent in the newly entitled position of "Die Engineer". While employed by Waterbury as Master Die Cutters, Petrorao and Carey were responsible for "[p]erform[ing] all required duties to make master hubs and working dies, for embossing designs on product," i.e., buttons. Similar to the other production and maintenance job classifications, a review of the pre and post-sale job descriptions for Master Die Cutters and Die Engineers reveals no significant alterations to the knowledge base or job duties of Petrorao or Carey. In fact, much of the same language as contained in Waterbury's Master Die Cutter job description is replicated in Respondent's later adopted Die Engineer job description. The only marked difference is the additional responsibility for seeking out new technologies to improve production methods.

Consistent with the uniformity of job functions between the Master Die Cutter and Die Engineer positions, Petrorao and Carey retained the same supervision as they had under Waterbury, reporting to Engineering Manager Tom Wirges. Further, upon reporting for work with Respondent, Petrorao and Carey were assigned to resume the same jobs they had been working on prior to their lay off from Waterbury. In addition to retaining the same supervisor and work assignments, Petrorao and Carey worked at the same workstation with the same equipment as under Waterbury Button. However, unlike other production and maintenance employees, Petrorao and Carey were not cross-trained to perform other functions in conformity with the cell manufacturing process. Neither Petrorao or Carey received any new or different training as Die Engineers. Rather, the only appreciable difference in their position after the takeover was the additional responsibility for seeking out information on more advanced production methods. The new aspect of the job was primarily conducted accessing the Internet to search for new die cutting technologies, such as electrical discharge machines (EDM) and software packages that would direct machines to cut dies. However, this amounted to only 2 percent of their overall working time. Their remaining time was spent performing the work they had always performed prior to the takeover, i.e., fabricating tooling (dies and forces) either through manual or machine cutting operations.

Where there are any inconsistencies between Carey and Petrorao's testimony, I credit Petrorao. I was generally impressed with Petrorao's demeanor. His testimony was detailed, and consistent during both direct and cross examination.

Carey, on the other hand, was at times vague and inconsistent. For example, although Carey initially testified on direct examination that he spent approximately 50% of his work time engaged in seeking out new technologies, it became clear upon cross examination that Carey's testimony related the time period after Petrorao was laid off and after Carey was inserted into the new position of "Product Development Technician", as discussed below.

While Respondent has advanced several defenses in support of its contention that it has no bargaining obligation regarding the Die Engineers, its initial claim was that the Die Engineer position was exempt from Union representation by virtue of it being a managerial position.

However, contrary to Respondent's position, the record is replete with evidence showing that the Die Engineers have no authority to formulate, determine, or effectuate Respondent's policies.

In this regard, the Die Engineers had no authority to pledge the credit of Respondent. Although the Die Engineers occasionally contacted outside vendors for the purpose of appropriating tooling or securing repairs to machinery, they had no authority to do so absent the express authorization of Engineering Manager Wirges. Nor did they have the authority to decide what work was shipped out and what work stayed in-house. They have no authority over other employees, nor did they possess any training responsibilities with regard to those employees. Although the Die Engineers would occasionally attend "die meetings" with customers for the purpose of offering insight into the production capacity of devising dies detailed enough to be responsive to customer wishes, they did not attend management meetings. Die Engineers were paid for any overtime worked, but had no authority to work overtime without prior approval. Moreover, Engineering Manager Wirges prioritized their work assignments. Each of the above job functions and/or limitations of functions applied equally under both Waterbury and Respondent. Further, the Die Engineers had no role in Respondent's establishment of the "cell manufacturing" process.

With respect to the one and only difference in job functions, i.e., seeking out new technologies for production, none of the recommendations proffered by the Die Engineers were adopted by Respondent. While Respondent appears to rely upon two reports sent to the attention of Petroraiio from sales persons marketing die-cutting apparatus, it is undisputed that Petroraiio merely passed those reports onto Wirges for consideration by persons with higher authority. Furthermore, Respondent was only able to produce one written report generated by Petroraiio regarding the die-cutting capabilities of machines he viewed while attending the one and only trade show Respondent authorized its Die Engineers to attend. This notable absence of documentary evidence is consistent with Petroraiio's testimony that he had no more authority under Respondent than he did under Waterbury, and cannot support a finding that the Die Engineers were involved in the formulation and/or effectuation of management prerogatives. To the extent that testimony of Respondent's witnesses is inconsistent, such testimony is not credited in view of my conclusion that Petroraiio is a credible witness, and the absence of any documentary evidence which is inconsistent with Petroraiio's testimony.

Curiously, Respondent retracted from its "managerial exclusion" position at the trial and argued in the alternative that its Die Engineers had no community of interest with the other production and maintenance employees. However, Respondent put on no evidence in support of this alternative contention. The record clearly establishes the Respondent's Die Engineers were historically accepted as members of the bargaining unit

under Waterbury and that they had regular interchange with other production and maintenance unit employees. In this regard, the Die Engineers regularly took their breaks with other production and maintenance employees, and they routinely spent time on the production floor whenever a die or force was broken during the production process. Moreover, the Die Engineers worked along side Unit member/Toolmaker Jack O'Brian, who assisted them in die making functions.

Respondent's explanation for its decision to subcontract the Die Engineers' work to outside contractors, resulting in the elimination of the position and the lay off of Petroraiio, was described by President Salamone. Salamone testified that Respondent initially created the positions of Die Engineer and Die Cutter with a view toward improving Respondent's in-house die cutting technologies. This would be accomplished by having the Die Engineers provide technical support for the Die Cutters, who would do the bulk of die-cutting machine operating functions. However, the Die Cutter position was never filled. Salamone further testified that in or around August or September 2000, he concluded that the necessary expenditures for up-grading Respondent's die-cutting capabilities through the purchase of modernized equipment was cost prohibitive, and as a result he made the decision to sub-contract Respondent's die cutting work instead of investing in the new technologies. This decision admittedly resulted in the elimination of the Die Engineer position since the work the Die Engineers had been performing would now be subcontracted to outside vendors.

Accordingly, Petroraiio was laid off on October 6. While Respondent retained Carey, he was inserted in the new position of Product Development Technician on the same day as Petroraiio was laid off.¹ Prior to assuming the new position, Carey spent most of his time doing hands-on die cutting work, whereas after assuming the new position that work was subcontracted to various "high tech vendors." Also after assuming the Product Development Technician position, unlike when he was employed as a Die Engineer, Carey exercised the authority to participate in the decisions as to which vendor would be awarded which die cutting jobs.

Respondent stipulated that it provided no notice or opportunity to bargain with the Union over its decision to subcontract Die Engineer work and the resulting decision to lay-off Petroraiio. As noted above, the Union had no notice of Respondent's complete elimination of the Die Engineer position until Respondent proffered testimony to this effect at the trial.

Analysis and Conclusion

As set forth above, Respondent admitted it was a successor to Waterbury pursuant to the criteria set forth in *Fall River Dying Corp.* supra. A successor employer may establish initial terms and conditions of employment. However, this right is not unfettered. Contrary to Respondent's primary contention, it was not entitled to delete the Master Die Cutters position (known as Die Engineers under Respondent) from the Unit as one of the initial terms and conditions of employment on which

¹ The fact that Carey no longer occupied the Die Engineer position was revealed for the first time on cross-examination.

it would hire the predecessor's employees. Although the Supreme Court in *National Labor Relations Board v. Burns International Security Services, Inc.*, 406 U.S. 272, (1972), held that a successor employer is entitled to set initial terms and conditions of employment, the Court clearly limited such terms and conditions only to the extent they are covered by Section 8(d) of the Act. Therefore, only "wages, hours and other terms and conditions of employment" were contemplated by the Court in its discussion of a successors' ability to set initial terms. The Board and the courts have repeatedly recognized that the scope and composition of a historical bargaining unit is not embraced by "wages, hours, and other terms and conditions of employment," within the meaning of Section 8(d) of the Act. Rather, unit changes are permissive subjects of bargaining, which Respondent could not implement without the Union's consent. See, e.g., *Holy Cross Hospital*, 319 NLRB 1361 fn. 2 (1995) ("once a specific job has been included within the scope of the unit... the employer cannot remove the position without first securing the consent of the Union of the Board); *Newspaper Printing Corp. v. National Labor Relations Board*, 625 F. 2d 1936 (D.C. Cir. 1988) (unit composition is not a mandatory subject of bargaining). In explicating the policy considerations that warrant a finding that unit scope and composition are permissive subjects of bargaining, the D.C. Circuit in *Idaho Statesman v. National Labor Relations Board*, 836 F. 2d 1396 (D.C. Cir. 1988) explained that if these were mandatory subjects of bargaining "an employer could use its bargaining power to restrict the scope of union representation in derogation of employees' guaranteed right to representatives of their own choice."

Respondent contends that it was willing to "discuss the inclusion or exclusion of the die engineer positions from the bargaining unit." However, the facts plainly establish that from the outset Respondent deleted Die Engineers from the Unit before it undertook any negotiations with the Union. It simply reclassified the Die Engineers as managers and refused to recognize the Union as their representative. No notice was given in advance of Respondent's actual implementation of these decisions. Thus, the Union was presented with a *fait accompli*. At most, Respondent provided the Union with notice of a *fait accompli*, which is not the sort of timely notice that would have afforded the Union a reasonable opportunity to bargain. *National Labor Relations Board v. Citizens Hotel Co.*, 326 F. 2d 501, 505 (5th Cir. 1964).

Nor is there any merit to Respondent's contention that inclusion of the Die Engineers in the unit would render it inappropriate because of the alleged changes to the Die Engineers' duties and responsibilities. In this regard, the Die Engineers continued to perform essentially the same job functions as they did when they were Master Die Cutters with Waterbury. The negligible change in their job duties was the added responsibility to seek out information on new technologies. I conclude this negligible added responsibility would not destroy the Unit's continued appropriateness. See, e.g., *Deferiet Paper Co.*, 330 NLRB No. 89 (2000).

There is absolutely no merit to Respondent's argument that the Die Engineers lacked a community of interest with other production and maintenance employees. In this regard, Re-

spondent failed to produce any evidence warranting their exclusion from the Unit. Moreover, the Die Engineers' work was the first step in the production of buttons. The board has expressed reluctance in disturbing established units where bargaining relative to those units has been successful. See, e.g., *Banknote Corp.*, 315, NLRB, 1041 (1994), enfd 84 F. 2d 637 (2d Cir. 1996). The Board has found this to be particularly true where bargaining history is the only evidence adduced concerning the unit's appropriateness. *Puerto Rico Marine Management*, 242 NLRB 181 (1979). Moreover, the fact that the Die Engineers received the same fringe benefits as other production and maintenance employees, retained frequent contact with production and maintenance employees, and possessed a high degree of functional integration with the production process, all militates in favor of the Unit's continued appropriateness. See, e.g., *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). Further, the Board merely requires "an appropriate unit." This unit is not only "an appropriate unit", unlike a unit with Section 2(11) supervisors, but it is a historical unit.

Finally, there is no merit to Respondent's assertion that the Die Engineers were properly excluded from the Unit as managerial employees. In this regard, the Board has defined managerial employees as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy." *General Dynamics Corp.*, 213 NLRB 851, 857 (1974). Although the Act contains no specific language excluding managerial employees from the Act's coverage, Board policy recognizes that managers are not "employees" as defined in the Act based on the premise that the functions and interest of such employees are more closely aligned with those of management than with production workers.

In the instant case, it is clear that the Die Engineers had no authority to make employer policy or to effectuate such policy. See, e.g., *Case Corp.*, 304 NLRB 939 (1991), (Board held industrial engineers were not managers since they had no extensive authority to make employer policy). The Die Engineers made no decisions that were not subject to the approval of higher management, they attended no management meetings, they were subject to extensive supervision, they had no authority to pledge Respondent's credit, they had no authority to establish production schedules (not even their own), they had no role in Respondent's production changes in its move to a "cell manufacturing" process, and they had no responsibility for training employees. In sum, the Die Engineers were at no time in any position to exert influence on management policy.

Accordingly, I conclude that the Die Engineers are part of, and included in the bargaining unit. I also conclude Respondent violated Section 8(a)(1) and (5) by refusing to recognize the Die Makers as part of the bargaining unit.

Respondent's unilateral subcontracting of Unit work, elimination of Unit positions and lay off Unit employee Petroraio are each decisions that fall within the sphere of subjects that have been determined by the board and the courts to be mandatory subjects of bargaining. In evaluating whether a given subject constitutes a mandatory subject of bargaining, essentially two distinct lines of cases have evolved. The first line of cases hold

that such decisions, which are clearly applicable in the instant case, are *per se* mandatory subject of bargaining. The second line of cases employ a balancing test between the competing employer and employee interests in determining whether a particular management decision that impacts unit employees is a mandatory subject of bargaining.

In most cases subcontracting of unit work is a mandatory subject of bargaining. In *Torrington Industries*, 307 NLRB 809 (1992), the Board reaffirmed the principles set forth in *Fiberboard Corp. v. National Labor Relations Board*, 379 U.S. 203 (1964), where the Supreme Court held that subcontracting is a mandatory subject of bargaining under circumstances where one group of employees has been substituted for another to perform the same work under the ultimate control of the same employer. In *Torrington*, the Board held that when those conditions are present “there is no need to apply any further tests in order to determine whether the decision is subject to the statutory duty to bargain.” “The Supreme Court has already determined that it is. 307 NLRB at 810. Even in the presence of these factors, the Board mused, while expressly declining to address the issue, that there may be circumstances “in which the non-labor cost reasons for subcontracting may provide a basis for concluding that the decision to subcontract is not a mandatory subject of bargaining.” *Id.* In such cases, however, the employer’s proffered reason for the decision to subcontract must implicate a matter of core entrepreneurial concern defined by a fundamental change is the “scope and direction” of its business. *First National Maintenance Corp. v. National Labor Relations*, 452 U.S. 666, 667 (1981). Since the employer in *Torrington* failed to show that its subcontracting decision was a core entrepreneurial decision or dictated by emergency, the Board found it unwarranted to invoke the any balancing test.

In applying *Torrington* to the instant case, there is little dispute that Respondent’s decision to subcontract the Die Engineers’ work was not necessitated by a change in the “scope and direction” of Respondent’s enterprise. Rather, Respondent’s action resulted in the direct replacement of Unit employees with independent contractors who perform the same work, fabricating dies to emboss designs on buttons, for Respondent’s already established customer base. In the absence of any evidence to the contrary, Respondent presumptively retained control over the terms and conditions by which the independent subcontractors performed these functions. Under such circumstances, it cannot be found that there is any alteration in the “scope and direction” of Respondent’s operations. Inasmuch as Respondent’s decisions did not turn on a change in the scope, nature or direction of its operations, its decisions were amenable to collective bargaining. Respondent failed to show that its reasons for subcontracting bargaining unit work, eliminating bargaining unit positions, and laying off unit employees involved “entrepreneurial decisions that are outside the range of bargaining or decisions dictated by emergencies that render bargaining impractical.” *Furniture Rentors*, 311 NLRB 749 (1994), *enf’d.* in part, denied in part 36 F. 3d 1240 (3rd Cir. 1994), remanded 318 NLRB 602, fn. 13 (1995). Thus, under the Board’s holding in *Torrington*, Respondent’s decision to subcontract the Die Engineers’ work, and the resulting decisions to completely eliminate this position from the Unit and

layoff Petrorao are mandatory subjects of bargaining. See also, *Holmes & Naver*, 309 NLRB 146 (1992) and *The Winchell Company*, 315 NLRB 526 (1994).

I conclude there is absolutely no reason a balancing test discussed in *First National Maintenance*, *supra*.

Accordingly, I conclude that Respondent violated Sections 8(a) (1) and (5) of the Act by subcontracting out the work of the Die Engineers and laying off its employee Petrorao.

In its answer to the original complaint, Respondent contends the affirmative defense that the allegations concerning the lay-off of Petrorao and the subcontracting of die maker work is time barred, despite the charge being filed ten days after the date of incident. In a review of its position statement, Respondent presents a theory that the Union should have known of the subcontracting and lay off of Petrorao before it even occurred. Moreover, since Salamone testified that these related decisions were not made until a month or two before the action was taken, it is absurd for Respondent to contend that the Union should be imputed with knowledge of these decisions before they were actually made. Accordingly, I find such contentions without merit.

I also find, Respondent’s further 10(b) contention regarding the elimination of the Die Engineer position is similarly without merit. In this regard, Respondent contends that the Union was placed on adequate notice of the elimination of the Die Engineer position sufficiently in advance so as to time bar the amendment to complaint made at the trial. In support of this contention, Respondent submitted into evidence a December 8 communication that it forwarded to the Regional office informing it of its decision and the implementation of the complete elimination of the Die Engineer position from the Unit. Notwithstanding, it is undisputed that while the Regional office may have been served with such notice, the Charging Party Union was not. It is well settled that Section 10(b)’s six-month limitation period “does not begin to run on an unfair labor practice until the person adversely affected is actually or constructively put on notice of the allegedly offending act.” (emphasis added). *Truck & Dock Services*, 272 NLRB 592, 593 (1984), and cases cited therein. Notice of the potential commission of an unfair labor practice must be clear and unequivocal before the time restrictions of Section 10(b) will start to run, and the burden of showing such notice is on the party raising the affirmative defense of Section 10(b). *AMCAR Division, ACF Industries, Inc.*, 234 NLRB 1063 (1978). Inasmuch as Respondent failed to offer even so much as a scintilla of evidence suggesting that the Union had notice of the total elimination of a bargaining unit position, it has clearly failed to meet its burden.

Moreover, Section 10(b) of the Act will not preclude finding a violation where the later charged complaint allegation is closely related to other timely filed allegations. See, *Redd-I Inc.*, 290 NLRB 1115, 1115-1116 (1988). In the instant case, the allegation regarding the elimination of the Die Engineer unit position is directly related to timely filed Complaint and Charge allegations that Respondent subcontracted the work of the Die Engineers and laid off Die Engineer, Petrorao. To determine whether an allegation is closely related, the Board In *Redd-I* stated that it would look at three factors: (1) whether

the charge and complaint allegations involve the same legal theory; (2) whether they arise from the same set of factual situations or sequence of events; and (3) whether a respondent would raise similar defenses to both allegations. Clearly, the answer to each of the above three elements is yes, since the very same Sections of the Act and facts pertaining to Respondent's subcontracting and lay off of Petrorao are involved in its eliminating the Die Engineer position. Accordingly, I conclude Respondent's Section 10(b) defense is without merit.

Pursuant to Respondent's special appeal, the Board issued an Order dated July 31, 2002 ordering this trial to be reopened for the sole purpose of eliciting testimony concerning Respondent's defense that the Union adopted an intransigent bargaining stance by insisting that Respondent assume its predecessor's contract, which Respondent contends privileged its unilateral conduct concerning the Die Engineers/Makers.

The facts, elicited pursuant to the reopening of this trial are set forth as follows.

After Respondent's January 21, 2000, purchase of the assets of Waterbury Button Company, it had only four meetings with the Union: February 10, March 2, March 21 and March 22. The first meeting was very short in duration and was held at the International Union's regional office in Farmington, Connecticut. Present on behalf of the Union was Local 376 President Russ See and International Representative Art Muzzicato. Representing Respondent at this meeting were Attorneys Joe Summa and Bill Ryan. The Union, through See, explained that the Union had a suspicion that the predecessor and Respondent were acting in "cahoots" to "shaft" the Union and the employees. See further explained that the Union's suspicion was based on such observable facts as former representatives and agents of the predecessor having ownership interest in Respondent's operations. Other observable facts supporting the Union's initial suspicions were that Respondent continued the predecessor's enterprise in essentially unchanged form, utilizing the same equipment at the same location to manufacture the same product for the same customers, all without any discontinuity in operations. Moreover, Respondent's predecessor (including Respondent's principles then employed by the predecessor Geraci and Coppice) concealed its sale of Waterbury Button from the Union until after the sales transaction occurred. Summa denied that there was any relationship between the two entities and informed See and Muzzicato that he expected that once Respondent's hiring was completed that it would have a bargaining obligation and likely would extend recognition to the Union. However, it is clear that recognition had not been granted as of the February 10 meeting.

Summa, Ryan, Muzzicato and Union Representative Carmen Burnham attended the second meeting on March 2. During this meeting Muzzicato took the position that Respondent was an alter ego of its predecessor and as such was obligated to reinstate all the employees laid off by the predecessor, and assume the Waterbury bargaining agreement.

Accordingly, Muzzicato requested various documents showing Respondent's ownership interest, including the sales agreement between Respondent and the predecessor. Summa communicated that Respondent "had no problem" in turning over the sales agreement so long as the Union executed a confi-

dentiality agreement first. Summa orally extended recognition to the Union on behalf of Respondent. However, despite the unilateral modifications to the Unit in connection with the Die Makers, Muzzicato responded by stating that he would provide Respondent with a "recognition agreement" detailing the composition of the Unit. Respondent does not dispute that Muzzicato offered to produce a "recognition agreement". Since the Union did not have the sales agreement, the Union was adamantly insisting on Respondent's wholesale adoption of the predecessor's contract already containing a recognition clause at Article 2.

I would conclude that, as of the close of this second of only four meetings, not a single indication surfaced that could suggest the Union was adhering to an intransigent position.

After the March 2 meeting, Muzzicato followed up with a second letter to Summa requesting the sales agreement so as to permit the Union to determine whether Respondent was an alter ego of the predecessor.

The next meeting took place on March 21 in Summa's office. The same parties were present as at the prior meeting. Muzzicato asked Respondent to "live up to" the successor's clause of the predecessor's agreement and hire back all the employees not retained by Respondent. Muzzicato stated that he was upset that Sal Geraci, Waterbury's Plant Manager and 20% shareholder of Respondent; was familiar with the contract and its requirement that the Union be notified in advance of any sale, yet chose to hide this information from the Union. Respondent refused to hire the laid off employees or be bound by the successor language in the predecessor's contract. Accordingly, the meeting closed by Muzzicato stressing that the Union needed the information including the sales agreement he had earlier requested. Without the sales agreement, the Union would not be able to ascertain whether Respondent was an alter ego of Waterbury. Another meeting was scheduled for the following day, March 22.

As with the last two meetings, the same parties attended the March 22 meeting, except that Ryan was only present on an intermittent basis.² At the beginning of the meeting, Respondent produced certain information requested by the Union, including Respondent's employee handbook, the job descriptions of the positions Respondent recognized as in the Unit,³ and the sales agreement. However, the sales agreement was not produced until the parties successfully negotiated the terms of a confidentially agreement. Upon review of the sales agreement, and noting that none of the predecessor's principles owned a majority interest in Respondent's enterprise, Muzzicato reached the conclusion that Respondent was not an alter ego of Waterbury Companies. Although the Union relinquished its initial position that Respondent was an alter ego after it obtained custody of the sales agreement, it continued to argue that

² Contrary to Summa's testimony that See was present at this meeting on behalf of the Union, Muzzicato's contemporaneous notes show that he was not.

³ Contrary to Summa's testimony that the job descriptions were provided on March 21, the job descriptions contain a handwritten notation by Muzzicato showing they were actually provided on March 22, which is also consistent with Muzzicato's contemporaneous notes.

Respondent should lose its ability to set initial terms and conditions of employment by virtue of its being complicit in the predecessor's unfair labor practices. Respondent suggests that the Union's vigorous opposition to the mass layoff of its members, who were not retained by Respondent, through its resort to legitimate legal processes, is tantamount to bad faith bargaining. In this regard, Respondent points to the fact that the Union had pending from March 17, 2000 until August 10, 2001, an unfair labor practice charge against Respondent seeking to prohibit it from setting initial terms and conditions of employment as evidence that the Union assumed an unreasonable and intractable bargaining position. However, I conclude the most plausible reason why an unfair labor practice charge would remain pending for such a prolonged period of time without a Regional determination being made is because there existed an arguable and legitimate basis to the charge.

At this same meeting, Summa told Muzzicato that Respondent would be employing a "cell manufacturing" concept. Muzzicato asked Summa about signing a recognition agreement, *whereupon for the first time Summa stated that there were two classifications Respondent wanted out of the Unit, Waste Treatment and Die Engineers, because they were now classified as managerial positions.* Muzzicato responded that the Union did not agree to the exclusion of those positions. Summa proposed that the positions be deleted from any recognition agreement embodying a unit description and that the Union attempt to bargain them back in. Muzzicato proposed that the positions remain in the bargaining unit and that Respondent could try to bargain them out. In light of Summa's assertions that these positions were management and the Union's desire to test the veracity of that claim, Muzzicato requested copies of the Waste Treatment and Die Engineers' job descriptions. He further requested that Salamone, the principal owner, be present at the next meeting since Summa was not familiar with Respondent's operations. The next meeting was scheduled for April 4.

At this point there are certain inconsistencies between Muzzicato's testimony and Summa's testimony. Based upon comparisons in demeanor, Muzzicato's contemporaneous notes, and consistent with the undisputed facts I find Muzzicato a more credible witness. Therefore, where there are inconsistencies in testimony, I credit Muzzicato.

At times inconsistent with Muzzicato's testimony and his contemporaneous notes of the March 22 meeting, Summa testified as follows:

... Muzzicato] was asking about the job descriptions. The— it [sic] was a pretty dramatic change. There used to be 49 different job descriptions now there nine. A lot of combined jobs because of the cell manufacturing concept. Art was asking questions about the jobs and what they did. We went over pay rates. He specifically raised as issue of a position Die Engineer [sic] which was not in the bargaining unit. ... I explained to him[,] I said [,] Art these are different positions. The primary purpose of this position the Die Engineer position [sic] is to go out and find new technology to make dies that the company believes it cannot go forward using the technology that is hundreds of years old. They need to go to

modern technology and that that was the primary function of these Die Engineers and that's why we didn't put them in the bargaining unit. ...I pointed out that there was a Die Cutter job description [,] and depending on where the evaluation of the technology came out [,] that may be filled in the future. I said look we are willing to bargain about this. [Emphasis added]

There is no ambiguity in Summa's testimony. He concedes that Respondent had unilaterally removed the "Die Engineer" position from the Unit before the March 22 meeting without seeking the Union's consent or extending an opportunity to bargain. Instead Respondent merely extended to the Union an offer to bargain over whether or not a different position would be filled at some unspecified future date.

Summa then testified that in response to his offer to bargain over the "Die Cutter" position Muzzicato asked, "[W]ell are you willing to take the old contract and rehire all the employees[?]" And upon receiving a negative response, Summa claims that Muzzicato said, "[W]ell then we really have nothing to talk about." To which Summa contends he responded, "[W]ell then we will have to let the NLRB decide." Summa's testimony, is seemingly crafted to create the impression that the Union conditioned any and all further bargaining upon Respondent acceding to the predecessor's contract, simply does not reconcile with the undisputed and corroborated evidence that Respondent cancelled subsequent bargaining meetings and failed to respond to the Union's requests to schedule additional bargaining meetings, as discussed below.

Muzzicato denies that he insisted on Respondent assuming the Waterbury collective agreement during the March 22 meeting. Upon Respondent's furnishing the Union with the sales agreement Muzzicato credibly testified that he realized that Respondent was probably not an alter ego. However, the Union had filed an unfair labor practice charge alleging Respondent was an alter ego, and without pushing the issue further, he would let the Region decide. It took the Region about nine months to decide the charge which was ultimately dismissed. However, there is no credible evidence that during the March 22 meeting or any time thereafter, Muzzicato insisted that Respondent assume the Waterbury contract.

Consistent with Muzzicato's testimony, his contemporaneous notes from the March 22 meeting show that another meeting had been scheduled for April 4. However, Summa called Muzzicato about two days before April 4 and cancelled the meeting, citing Salamone's inability to attend as the reason for the cancellation. Nevertheless, another meeting was scheduled for June 14. Summa similarly cancelled that meeting due to Salamone's unavailability. Respondent does not dispute that additional meeting were scheduled, or that Summa canceled those meetings. Over the ensuing months, Muzzicato encountered Summa while the two were functioning as the respective bargaining representative of Theis Precision Steel and its unionized employees. On each occasion, Muzzicato requested that another meeting date be set. Summa responded that he would first have to check Salamone's availability and then get back to Muzzicato. Summa never did get back to Muzzicato. Muzzicato's testimony is corroborated by the testimony of

Mark Liburdi, Theis Precision Steel's Bargaining Committee Member, and current Local President of that Unit.

While Summa admits encountering Muzzicato during the summer months after the March 22 meeting, he contends, contrary to Muzzicato and the credible evidence above, that it was he who sought to schedule additional meetings and he who was rebuffed by Muzzicato, who allegedly refused to meet unless Respondent first assumed the predecessor's contract. Unlike Muzzicato's testimony, not only is Summa's testimony uncorroborated, I find it is also implausible. If Summa had been confronted by such obstructionism, it makes no sense why he waited until well over a year later to file an unfair labor practice charge against the Union alleging it was impeding good faith bargaining. One would think that a seasoned professional such as Summa with his nearly 30 years experience in labor law would have perceived much earlier the legal ramifications of the Union's conduct had the Union actually engaged in the conduct as alleged. When confronted by his failure to act more expediently, on cross-examination, Summa admitted that he did not believe the Union had engaged in bad faith bargaining. In agreement with Summa's assessment, both the Regional Office and the Office of Appeals concluded that there was no merit to Respondent's charge that the Union engaged in bad faith bargaining.

In further support of its non-meritorious defense, Respondent put on evidence involving a post-complaint meeting of the parties occurring in or around October 2, 2001. Counsel for the General Counsel objected that the testimony elicited ought to be deemed inadmissible and stricken from the record as occurring in the context of settlement discussions. I find the timing of such meeting would support General Counsel's contention that such meeting was for the purpose of exploring settlement of the pending complaint. Accordingly, I strike Summa's testimony in this regard. See, *Nathan Yorke, Trustee*, 256 NLRB 819, 825 (1981). Moreover, given my conclusion concerning Respondent's unlawful conduct in unilaterally altering the scope and composition of an historical bargaining unit, the Union was privileged in demanding that the status quo be restored before any further settlement discussions continued. Lastly, any testimony concerning a post-complaint meeting is on its face irrelevant as it occurred several months after Respondent's unlawful conduct.

Respondent's defense, as articulated pursuant to the Board's Order dated July 31, 2002, stands common sense on its head. It is illogical for Respondent to argue as a defense that the Union assumed an intractable bargaining stance, where, as here, the evidence establishes Respondent took its unilateral action well in advance of the Union staking out any bargaining position whatsoever. The facts establish that it was Respondent that obstinately clung to its decision, made even before the onset of operations, to remove the Die Engineers/Makers from the historical bargaining Unit. Respondent then points to the Union's later expressed opposition to this unilateral action as proof that the Union possessed no intentions of bargaining over the Die Engineers/Makers. Contrary to Respondent's viewpoint, however, the Union was free to oppose Respondent's maneuvers in unilaterally tailoring the Unit.

Even if Respondent's testimony alleging the Union assumed

a "take it or leave it" or assume the contract bargaining stance is not discredited, repeated Board cases directly on point make it clear that Respondent was nonetheless required to afford the Union notice and an opportunity to bargain before implementing its October 2000 decisions to subcontract the "Die Engineers work, eliminate their position, and layoff Petrorao. In *Manor Mining and Contracting Corp.*, 197 NLRB 1057 (1972), the union was found to have adopted a "take it or leave it" bargaining position by insisting that the employer sign an industry-wide contract. In response, the employer unilaterally instituted a pay raise which it hadn't first offered to the Union. In spite of the union's "take it or leave it" bargaining stance, the Board found the employer violated Section 8(a)(5) when it failed to afford the union the opportunity to bargain over the pay raises.

Similarly, in *Antonio's Restaurant*, 246 NLRB 833 (1979), the employer had timely withdrawn from a multiemployer bargaining association and terminated the multiemployer contract. The union maintained that the employer was bound by a successor multiemployer contract and refused to meet with the employer for any other purpose. The union thereafter sought to negotiate with the employer. The Employer refused to meet and made unilateral changes in various benefit programs. The Administrative Law Judge, whose decision was adopted by the Board, rejected the employer's defense that it would have been futile to contact the union because of the union's earlier "take it or leave it" conduct. Based on the above authority, it is clear that even if the Union had engaged in "take it or leave it" bargaining with respect to the predecessor's contract, this does not license Respondent to subvert the statutory requirements of good faith bargaining.

Accordingly, I find Respondent's contentions set forth in its special appeal, and the evidence adduced during the reopening of this trial to be without merit.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Union is the exclusive collective-bargaining representative for the following unit of employees: all production and maintenance employees at its Waterbury facility, including receiving, weighing and stock clerks, but excluding office and professional employees, guards, drafters, drafting, toolroom and billing clerks, nurse, laboratory employees, expeditors, timekeepers, supervisors, factory supervisors, and all other supervisors as defined in the National Labor Relations Act as amended.
4. By refusing to recognize the Die Makers as members of the above unit, Respondent has violated Section 8(a)(1) and (5) of the Act.
5. By refusing to bargain over the terms and conditions of the Die Makers, Respondent has violated Section 8(a)(1) and (5) of the Act.
6. By laying off Die Maker Michael Petrorao, Respondent has violated Section 8(a)(1) and (5) of the Act.
7. By subcontracting out die maker work, Respondent has violated Section 8(a)(1) and (5) of the Act.

REMEDY

Having found Respondent has engaged in the unfair labor practices described above, I shall recommend Respondent must be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

Accordingly, I shall issue a recommended order requiring Respondent to cease and desist the conduct described above in paragraphs 4 through 7 of the Conclusions of Law.

Affirmatively, I shall issue a recommended order requiring Respondent to reinstate Michael Petroraio to his former job with his former terms and conditions of employment, make him whole for loss of earnings suffered as a result of his layoff with the back pay period to run from the date of his layoff until Respondent offers him an unconditional offer of reinstatement as defined by Board authority.

Back pay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950) with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Additionally I shall recommend an Order requiring a restoration of the Die Engineer classification.

Respondent has urged that in the event Respondent is found to have violated the Act by eliminating the Die Engineer position, subcontracting the Die Engineer's work, and laying off Petroraio, the appropriate remedy is that which is described in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). However, I conclude the appropriate remedy here is restoration of the status quo ante and bargaining. Unlike the instant case, the unfair labor practice remedied in *Transmarine* involved a failure to engage in effects bargaining only with regard to a complete plant closure. While a lesser remedy may be appropriate when a violation implicates decisional bargaining under circumstances where a restoration order would place an unwarranted burden on the Respondent, the facts here do not compel such a finding. As noted by the Board in *Power, Inc.*, 311 NLRB 599, 600 (1993), [w]hen bargaining unit work has unilaterally and unlawfully been removed, whether by subcontracting or relocation, it is appropriate to order restoration of the work to the bargaining unit, unless the employer has demonstrated that restoration would be unduly burdensome." Since the record is devoid of any evidence showing that a restoration order would impose upon Respondent any undue hardship, only a full restoration remedy would uphold the policies and purposes of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, OGS Technologies, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize the Die Makers or Die Engineers as members of the following unit of employees;

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

All production and maintenance employees at its Waterbury facility, including receiving, weighing and stock clerks, but excluding office and professional employees, guards, drafters, drafting, toolroom and billing clerks, nurse, laboratory employees, expeditors, timekeepers, supervisors, factory supervisors, and all other supervisors as defined in the National Labor Relations Act, as amended.

(b) Refusing to bargain with United Automobile, Aerospace & Agricultural Implement Workers of America, Local 376, AFL-CIO, the Union, over terms and conditions of employment of Die Makers or Die Engineers.

(c) Laying off or transferring Die Makers or Die Engineers out of the bargaining unit described above.

(d) Implementing and maintaining a practice of subcontracting out Die Maker, or Die Engineer work.

(e) In any other like or related manner interfering, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer to Michael Petroraio his former position of employment, or if no such position exists, to a substantially equivalent position of employment, without prejudice to his seniority, or other rights and privileges he previously enjoyed, and make him whole in the manner set forth in the Remedy portion of this Decision described above from the date of his layoff, until the date of a valid offer of reinstatement.

(b) Restore the job classification of Die Maker and or Die Engineer and produce the work previously performed by this job classification.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Waterbury, Connecticut facility copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 6, 2000.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, Local 376, AFL-CIO (the Union) before we deny you Union representation.

WE WILL NOT refuse to bargain with the Union about your wages, working hours, and other terms and conditions of employment.

WE WILL NOT refuse to bargain with the Union before we subcontract your work.

WE WILL NOT refuse to bargain with the Union before we eliminate your jobs.

WE WILL NOT refuse to bargain with the Union before we lay you off.

WE WILL NOT in any similar way interfere with your rights under the law.

WE WILL return Michael Petroraio to his former job and pay him for any lost wages or benefits.

WE WILL restore the job classification of Die Engineer.

O.G.S. TECHNOLOGIES, INC.